NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Venetian Casino Resort, LLC and Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226 and Bartenders Union, Local 165, affiliated with Hotel Employees and Restaurant Employees International Union. Case 28–CA–16000

August 27, 2010

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND BECKER

On September 30, 2005, the National Labor Relations Board, by a three-member panel, issued a Decision and Order¹ in this proceeding, in which it adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) by (1) summoning the Las Vegas Metropolitan Police and requesting that demonstrators on behalf of the Union, who were engaged in a peaceful demonstration, be issued trespass citations and excluded from the sidewalk in front of the Respondent's facility; (2) causing the recording of a trespass message and playing of the message over a loudspeaker directed at the demonstrators; and (3) informing Union Business Agent Glen Arnodo, who was participating in the peaceful demonstration on the sidewalk in front of the Respondent's facility, that he was being placed under citizen's arrest, and the following day contacting the police to make a report of the incident. The Board ordered the Respondent to cease and desist from this unlawful activity and to take certain affirmative action.

Thereafter, the Respondent filed a petition for review with the United States Court of Appeals for the District of Columbia and the Board filed a cross-application for enforcement of its Order. A Panel of that court enforced the Board's Order regarding the broadcasting of the trespass message and the attempt to effect a citizen's arrest, but found that the Board failed to address the Respondent's contention that summoning the police was direct petitioning of the Government and therefore protected by the First Amendment. The court remanded this issue to the Board.² After the court's remand, the General Counsel, the Charging Party, and the Respondent filed statements of position.

On April 29, 2009, the two sitting members of the Board issued a Supplemental Decision and Order in this proceeding, which is reported at 354 NLRB No. 9, in which they reconsidered the remanded finding.³ Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the Board issued an order setting aside the above-referenced decision and order, and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.⁴

The Board has reconsidered the remanded finding, as well as the General Counsel's, the Charging Party's, and the Respondent's statements of position, and has decided to sever the remanded finding for further consideration. Accordingly, we shall issue a new Order that severs the remanded finding from this proceeding. Because that issue is severed, it is appropriate that the Respondent comply forthwith with the enforced portions of the Board's September 30, 2005 Order.⁵

ORDER

The Board's Order, reported in 345 NLRB 1061 (2005), is reaffirmed as modified below.

- 1. Delete paragraph 1(a) and reletter the subsequent paragraphs.
- 2. Substitute the attached notice for that attached to the Board's original Decision and Order.

¹ 345 NLRB 1061.

² 484 F.3d 601, 610 and 614 (2007), cert. denied 128 S.Ct. 1647 (2008).

³ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

⁴ Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

⁵ The only affirmative provision of the Order previously enforced by the court directs the Respondent to post a notice to employees. Consistent with our decision today, we have prepared a new notice that conforms to that enforced Order by removing any reference to the severed allegation.

IT IS FURTHER ORDERED that the remanded finding is severed from this proceeding and will be retained by the Board for further consideration and appropriate action.

Dated, Washington, D.C. August 27, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights.

Specifically:

WE WILL NOT read or play a recording of a trespass message over a loudspeaker directed to individuals who are peacefully demonstrating and engaging in lawful conduct on behalf of the Union, or any other labor organization, on the sidewalk in front of our property adjoining Las Vegas Boulevard South, Las Vegas, Nevada.

WE WILL NOT place agents of the Union, or any other individuals, who are engaged in a peaceful demonstration and lawful conduct on behalf of the Union, or any other labor organization, on the sidewalk in front of our property adjoining Las Vegas Boulevard South, Las Vegas, Nevada, under citizen's arrest, or contact the Las Vegas Metropolitan Police Department to report the citizen's arrest.

WE WILL NOT in any similar manner interfere with, restrain, or coerce individuals in the exercise of the rights guaranteed them by Section 7 of the Act.

VENETIAN CASINO RESORT, LLC